

**CARVER COUNTY BOARD OF ADJUSTMENT**  
**Regular Meeting – March 6, 2019**  
**Minutes**

Members Present: Scott Hoese, Richard Kvitek, Virgil Stender, Mark Willems, Robin Bielefeldt

Members Absent: Doug Weber

Members Late: None

Staff Present: Steve Just, Jason Mielke

Pursuant to due call and published notice thereof, the March 6, 2019, meeting of the Carver County Board of Adjustment was called to order by Chairman Hoese at 7:00 p.m.

**Minutes** – A motion was made by Kvitek and seconded by Stender to approve the minutes of the February 6, 2019, meeting as written. All voted aye. Motion carried.

**Public Hearing - File # 20190009 – Jodene Heldt** –Chairman Hoese called the public hearing to order at 7:01 p.m. to consider the application of Jodene Heldt pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request for reduced shoreland setback pursuant to Chapter 152 of the County Code. The property is located in Section 11 of Watertown Township.

The following were present: Jodene Heldt, Stephen Penegor

The following items were entered into the hearing record:

Exhibit A - Legal Description

Exhibit B - Affidavit of Publication of the Hearing Notice

Exhibit C - Affidavit of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E - Letter from the Applicant dated February 4, 2019

Exhibit F – Letter to the Board of Adjustment and Watertown Township dated February 25, 2019, and all attachments.

Mielke explained the applicants removed an existing house and rebuilt a new house in the same footprint as the previous structure. They are requesting to remove and reconstruct a deck on the new house which is larger than the previous deck and will be closer than the required 150-foot shoreland setback from Oak Lake. The Zoning Code allows for replacement of a non-conforming structure but not any expansion. The proposed deck would be approximately 103 feet from the OHW of Oak Lake, reflecting a 47-foot variance. The proposed setback would be outside of the Shore Impact Zone of Oak Lake. The septic system has a current certificate of compliance. The DNR hydrologist had no comments or concerns about the request and was satisfied that the footings are located at least 1 foot above the OHW. Watertown Township

heard and recommended approval of the request at their February 4<sup>th</sup> meeting. Mielke read the conditions for consideration if the request is approved.

Chairman Hoese, speaking for Watertown Township, confirmed they reviewed the request and recommended approval.

A correction was noted that the site address is 2530 Navajo Av. It had been incorrectly typed as 12530 Navajo Av.

A motion was made by Willems and seconded by Kvittek to conclude the public hearing. All voted aye. Motion carried. The public hearing was concluded at 7:07 p.m.

A motion was made by Stender and seconded by Willems to **approve and issue Order PZ20190009** allowing for reduced shoreland setback and the following conditions:

1. This house w/attached garage shall be used only by the occupant(s) of the residence as a residence and for personal storage, hobbies, recreation, entertainment, family uses, private maintenance and repair activities, and as otherwise regulated by this Ordinance. Guest quarters and/or additional dwelling units are strictly prohibited. No products or services shall be offered for sale for pay or similar remuneration except as permitted for a home occupation or as otherwise regulated by this Code.
2. The Permittee shall obtain the appropriate building permit(s) prior to the construction of the deck.
3. No additional expansions shall be permitted without obtaining all necessary building permits.
4. All work shall be completed in accordance with the submitted site plan(s). The new construction shall not encroach any closer to the OHW of Oak Lake than approved as part of this permit application.

All voted aye. Motion carried.

**Public Hearing - File # 20190006 – Jonathon Wasser** –Chairman Hoese called the public hearing to order at 7:08 p.m. to consider the application of Jonathon Wasser pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request for reduced shoreland setback pursuant to Chapter 152 of the County Code. The property is located in Section 5 of Watertown Township.

The following were present: Jonathon Wasser

The following items were entered into the hearing record:  
Exhibit A - Legal Description  
Exhibit B - Affidavit of Publication of the Hearing Notice  
Exhibit C - Affidavit of Mailing of the Hearing Notice  
Exhibit D – Site Plan

Exhibit E – Two letters from the Applicant

Exhibit F – Letter to the Board of Adjustment and Watertown Township dated February 25, 2019, and all attachments

Just explained the applicant's request to construct a 48 foot x 64 foot accessory structure approximately 90 feet from DNR protected water 10-91P, reflecting a 60-foot variance. The minimum setback from a Natural Environmental Lake is 150 feet. Just used an aerial map to illustrate the proposed location and the Shoreland and Floodplain areas of the property. The DNR is comfortable if the setback is at least outside of the shoreland impact zone, so 75 feet is typically acceptable. The applicant described a hardship in that the buildable area on the property is limited due to the shoreland area. This is a non-conforming lot which was created prior to any shoreland regulations being established. This watershed is also being re-studied for floodplain. The current base flood elevation is 938.3 and it is anticipated to be dropped by 3 feet to 935. He referred to the aerial map which illustrated the elevations and discussed the requirement for the regulatory flood protection elevation as being one foot above the current base flood elevation. Watertown Township heard the request and recommended approval at their January 7<sup>th</sup> meeting. Just read the conditions for consideration if the request is approved. Just also noted that Mr. Wasser submitted an updated letter regarding his request. He explaining that originally it was thought that a CUP would be necessary for the structure, however; after further research, the existing barn is unusable as a garage or personal storage space and that size is not considered in the total square foot total, which is defined in the ordinance.

Mr. Wasser stated the proposed structure will likely be approximately 20 feet from the property and a little further north than indicated on the site drawing which will bring it further away from the protected watercourse.

Scott Hoese, speaking for Watertown Township, confirmed the Township's recommendation for approval of the request.

Bielefeldt asked why the structure couldn't be placed in an area to meet the required setbacks.

Mr. Wasser reiterated the proposed location will be slightly different from the illustration on the site plan. He stated that access will be from the north side as it would not be feasible to drive around the structure with trucks and trailers and other equipment.

Just stated that he and the applicant worked to find an acceptable location, but there was no area that would meet the 150-foot setback. The proposed location is out of the floodplain designation but does not meet the shoreland setback.

A motion was made by Stender and seconded by Willems to conclude the public hearing. All voted aye. Motion carried. The public hearing was concluded at 7:19 p.m.

A motion was made by Kvitik and seconded by Hoese to **approve and issue Order PZ20190006** allowing for reduced shoreland setback and the following conditions:

1. The Permittee shall obtain the appropriate building permit(s) prior to the construction of the accessory structure. A grading plan and erosion/sediment control plan shall be prepared, submitted and approved as part of the building permit application process. The lowest floor elevation for the accessory building shall conform to the appropriate Shoreland/Floodplain Regulations.
2. All work shall be completed in accordance with the submitted site plan(s). The new structure shall maintain a minimum of a 75-foot setback from the OHW of DNR Protected Water 10-91P.
3. The accessory building shall be used only by the occupant(s) of the residence for personal storage, hobbies, recreation, entertainment, family uses, private maintenance and repair activities, and as otherwise regulated by this Ordinance. Guest quarters and/or additional dwelling units are strictly prohibited. No products or services shall be offered for sale for pay or similar remuneration except as permitted for a home occupation or as otherwise regulated by this Code.

Hoese, Kvitek, Stender and Willems voted aye. Bielefeldt voted nay. Motion carried.

**Public Hearing - File # 20190007 – Robert Brose** –Chairman Hoese called the public hearing to order at 7:20 p.m. to consider the application of Robert Brose pursuant to Chapter 152 of the County Code. The purpose of the public hearing was to consider a request for consideration of a minor subdivision and recognition of reasonable use pursuant to Chapter 152 of the County Code. The property is located in Section 2 of San Francisco Township.

The following were present: Robert Brose, Larry Schmidt, Dan Lind, Mary Miller, Rick Miller, Rich Roiger

The following items were entered into the hearing record:

Exhibit A - Legal Description

Exhibit B - Affidavit of Publication of the Hearing Notice

Exhibit C - Affidavit of Mailing of the Hearing Notice

Exhibit D – Site Plan

Exhibit E - Letter from the Applicant

Exhibit F – Letter to the Board of Adjustment and San Francisco Township dated February 26, 2019, and all attachments

Mielke explained the subject property is a separate parcel, Outlot A, in the plat of Olson’s East Forty. The required agricultural parcel in this Residential Cluster Development was comprised of 2 Outlots, A and B, which are physically separated by a road (Hayes Ln – Outlot C). The Zoning Code no longer provides for Residential Cluster Developments, but regulations are in place to enforce the existing developments. The applicant is proposing to purchase Outlot A and combine it to his existing adjacent 4.73 acre parcel. This would result in a parcel of less than 20 acres (Outlot B) to be considered the agricultural parcel of the development, requiring a variance.

There is a building eligibility associated with Outlot B of the plat. Mielke gave a brief history about the platting process when this development was established. He also explained the standards for the minor subdivision process. Mielke clarified that if this request is approved, the 16.22 acre parcel, Outlot B, will still be considered the agricultural parcel of the development, but will not qualify for agricultural permits, as it is under 20 acres. All structures on this parcel will require residential building permits under the State building code. San Francisco Township reviewed and recommended approval of the request at their January 14<sup>th</sup> meeting. Mielke read the conditions for consideration if the request is approved.

Larry Schmidt, representing San Francisco Township, confirmed the Township's recommendation of approval of the request. He stated that access to the proposed shed on the Outlot should be from Mr. Brose's existing parcel, and it should not be used as a contractor's yard.

Mielke stated the proposed shed and access would be addressed as a part of the Conditional Use Permit process.

Dan Lind, 16150 Hayes Ln, expressed concern of possible development of the remainder Outlot B, and did not want to have that happen.

Mielke explained the 4 building eligibilities that were platted into the development of Olson's East Forty, stating that 3 have been used by the existing houses and there is 1 building eligibility available on Outlot B. There are no additional density options available for that property.

Mr. Lind questioned the possibility of subdividing the 16 acres, since both Outlots deemed one parcel and are now being subdivided.

Just clarified that the Zoning Code only allows for 4 houses in a quarter quarter. This policy has been in effect for approximately 30 years or so, and the 2040 Comprehensive Plan does not change that at all. If the property is annexed into a city, that might change, but would not be in the immediate future. Outlot B is allowed to have 1 house built on it which has been that way since the plat was developed in 1996.

Mr. Lind asked where the proposed shed is going to be located on Outlot A.

Mielke stated the applicant could answer that question. That information is not what is being acted upon with the variance request, but would be a part of the discussion at the Planning Commission meeting on March 19<sup>th</sup>.

Mr. Brose responded and indicated the proposed location of the shed on the northerly part of the property.

For clarification and comparison, Just further explained activities that could currently have occurred on this parcel as the agricultural parcel of the development. This variance will reduce the potential for agricultural structures on that property.

Mary & Rick Miller, 16190 Hayes Ln, asked how this subdivision will affect the currently shared maintenance and upkeep of Outlot C among the owners.

Mielke replied that this should be addressed with the Township as the road authority. It seems as if Mr. Brose will not access the property from Hayes Ln.

Mr. Miller asked questions about the Residential Cluster development and restrictions.

Just replied that the Zoning Code does not allow new Residential Cluster developments, but has language enforcing the existing developments.

Rich Roiger, 16050 Hayes Ln, expressed concern of have a large building near his property and the future possibility of having animals.

Mielke stated that the CUP application indicates the structure to be used for personal storage. The Zoning Code would allow for a few animals which would be limited by the number of animal units and acreage.

Just reiterated that the property would not qualify for feedlot status and the number of animal units would be limited to under 10. He explained this comparison to what would be allowed at the property in its current state.

Mr. Schmidt mentioned animal issues in other Cluster developments. He also stated noise issues might be addressed in the covenants of the plat.

Mr. Brose confirmed that there should be no increase in activity on the property because of the proposed accessory structure.

A motion was made by Bielefeldt and seconded by Willems to conclude the public hearing. All voted aye. Motion carried. The public hearing was concluded at 7:50 p.m.

A motion was made by Willems and seconded by Kvitek to **approve and issue Order PZ20190007** allowing for minor subdivision and recognition of reasonable use and the following conditions:

1. No accessory structures shall be allowed to be constructed on Outlot B, Olson's East Forty Addition until such time as a single-family residence building permit has been approved and issued, or until the parcel conforms to the Carver County Zoning Code regulations/standards.
2. Outlot A shall not be sold separately from the adjacent Brose property unless it conforms to the Carver County Zoning Code regulations/standards.

3. Outlot B of Olson's East Forty Addition shall remain the agricultural area of the Residential Cluster Development; however, no agricultural structures shall be allowed due to the reduced acreage (<20 acres).

All voted aye. Motion carried.

**Adjournment**

Having completed the agenda items and seeing no other business, Chairman Hoese deemed the meeting adjourned at 7:51 p.m.